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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/876,322	06/07/2001	Ward Beryl Bowen JR.	87312.000003	8426
23387	7590	05/20/2004	EXAMINER	
Stephen B. Salai, Esq. Harter, Secrest & Emery LLP 1600 Bausch & Lomb Place Rochester, NY 14604-2711			PAK, JOHN D	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/876,322

Applicant(s)

BOWEN ET AL.

Examiner

JOHN D PAK

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10/10/03, 10/24/03 and 2/24/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-36 and 42-109 is/are pending in the application.
- 4a) Of the above claim(s) 78-109 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 42-68 and 70-77 is/are allowed.
- 6) ☒ Claim(s) 1-11, 15, 17-19, 22, 23, 34, 35 and 69 is/are rejected.
- 7) ☒ Claim(s) 12-14, 16, 20-21, 24-33 and 36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Claims 1-36 and 42-109 are pending in this application.

Newly amended claims 79-109 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Independent claim 79 recites "an agent reactive with alcohol" as a composition component. This component was not previously presented, searched or reviewed; and it appears to be new matter.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 79-109 are withdrawn from consideration as being directed to a non-elected invention. Claim 78 stands withdrawn as being directed to nonelected subject matter for the reasons of record. See 37 CFR 1.142(b) and MPEP § 821.03.

Claims 69 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 69 contains a misspelling, "deviations." Applicant should correct the spelling, and explain the metes and bounds of derivatives and analogs for this claim.

Additionally, applicant is requested to clarify the metes and bounds of other derivatives and analogs used throughout the claims, see e.g. claim 28.

Claims 42-68 and 70-77 are allowed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 stand rejected under 35 U.S.C. 102(b) as being anticipated by Vadgma et al. (WO 98/20332) for the reasons of record.

Applicant's arguments relative hereto have been given due consideration, but they were deemed unpersuasive. Applicant places undue emphasis on the intended application of Vadgma's composition. The Examiner is not relying on such intended use. The claimed invention is directed to the composition per se. Therefore, regardless of the prior art's intended use, if the same composition per se is disclosed, and that composition is capable of being used as claimed by applicant, the prior art is applicable. MPEP 2112, 2112.01. The Examiner has consistently maintained this position for Vadgma's explicitly disclosed physiological-grade mixture of potassium ferricyanide + NAD<sup>+</sup> (Examples 2 and 3 on pages 9-10). The ground of rejection must be maintained.

Claims 1-2, 4-11, 15, 17-19, 22-23 and 34-35 stand rejected under 35 U.S.C. 102(b) as being anticipated by Blass (US 5,053,396) for the reasons of record.

Applicant's arguments relative hereto have been given due consideration, but they were deemed unpersuasive. Applicant argues that certain of Blass' composition ingredients would interact such that "the irons would be reduced from the ferric (III) oxidation state to the ferrous (II) state which would not act as an accelerator or indeed be able to function as a pseudo-dehydrogenase." Applicant ignores a key teaching by Blass – at column 5, lines 4-11, Blass discloses that trace metals such as manganese, iron, chromium, copper and zinc, can be present in small quantities to help the function of NAD as an oxidant of alcohol. At the bottom of column 5 there is an example of composition ingredients wherein NAD, pyridoxine, thiamine, fructose, bicarbonate, carbonate, zinc, iron, manganese and chromium are included. If Blass' earlier disclosure from column 5, lines 4-11, is to have any effect, the zinc, iron, manganese and chromium in the exemplified composition must necessarily be in a state that can "help" the NAD oxidize alcohol. Consequently, applicant's arguments on some alleged interaction of the ingredients is countered by Blass' explicit teaching to use the metals so that they "help" the function of NAD as oxidant of alcohol. The ground of rejection must be maintained.

In applicant's remarks of 10/10/03, applicant states that the composition by Crans et al. "could not act as a[n inventive] composition and the Applicant's invention does." The main point appears to be that the vanadate in Crans et al. would not

function as required by the claims. The Examiner shall therefore interpret the claims to exclude vanadates and the ground of rejection based on Crans et al. is hereby withdrawn.

Claims 12-14, 16, 20-21, 24-33 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

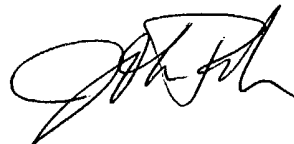
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Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is **(571)272-0620, effective February 3, 2004**. The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Thurman Page, can be reached on (571)272-0602, effective February 3, 2004.

The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)272-1600.

A handwritten signature in black ink, appearing to read 'John Pak', with a stylized, cursive script.

JOHN PAK  
PRIMARY EXAMINER  
GROUP 1200